

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of:

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16-CRB-0001 SR/PSSR
(2018-2022) (Remand)

**SOUNDEXCHANGE’S EXPEDITED REQUEST
FOR CLARIFICATION OF JULY 29, 2021 ORDER**

SoundExchange, Inc. (“SoundExchange”) respectfully requests clarification of the Copyright Royalty Judges’ (“Judges”) Order dated July 29, 2021 with regard to what effect, if any, that Order has on today’s filing deadline. *See* Order Granting in Part, and Denying in Part, Music Choice’s Motion to Compel, and Providing for Further Submissions.

During the initial stages of this remand proceeding, the Judges granted the participants’ joint request for a briefing schedule pursuant to which responsive briefs would be due today, July 30, 2021. Order Approving Joint Proposed Schedule of Proceedings on Remand (Dec. 20, 2020). The participants have proceeded according to that schedule to date.

In the course of discovery, a dispute about privilege arose, which prompted briefing and submissions over the last several months. In response to that dispute, the Judges have now issued an Order Granting in Part, and Denying in Part, Music Choice’s Motion to Compel, and Providing for Further Submissions (explaining history of dispute). That Order resolves the

privilege issues with respect to certain documents, and requests further briefing and information with regard to others. *Id.*

Based on its view that the disputed documents could affect its reply brief, Music Choice filed a motion seeking an extension of time to file written reply submissions. *See* Music Choice's Motion for an Extension of Time to File Written Reply Submission (July 8, 2021).¹ Music Choice's motion remains pending, despite the remaining privilege issues in dispute.

In light of yesterday's Order and today's filing deadline, SoundExchange respectfully requests that the Judges clarify what effect, if any, their Order on Music Choice's Motion to Compel has on the deadline for reply submissions (originally due today). If the Judges prefer that the participants go forward with filing responsive briefs today – which the participants are prepared to do – SoundExchange seeks guidance on whether these briefs may be supplemented after all privilege issues are resolved and what the scope of any supplemental briefing may be. This request is made with the goal of minimizing duplication and avoiding the prejudice that would arise if parties were permitted to alter their arguments after reply briefs are filed.

Dated: July 30, 2021

Respectfully submitted,

/s/ Emily L. Chapuis

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¹ SoundExchange initially opposed the motion to the extent that it sought an indefinite extension, but agreed that the reply deadline should be extended for several weeks. In light of yesterday's Order regarding the outstanding privilege issues, SoundExchange is willing to drop that limited objection.

Proof of Delivery

I hereby certify that on Friday, July 30, 2021, I provided a true and correct copy of the SoundExchange's Expedited Request for Clarification of July 29, 2021 Order to the following:

Warner Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Recording Industry Association of America, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Sirius XM, represented by Todd Larson, served via ESERVICE at todd.larson@weil.com

SAG-AFTRA, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Federation of Musicians of the United States and Canada, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Music Choice, represented by Paul M Fakler, served via ESERVICE at pfakler@orrick.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Sony Music Entertainment, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Association of Independent Music ("A2IM"), represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Universal Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Signed: /s/ Emily Chapuis